

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:13CR273
	)	
vs.	)	
	)	
	)	
CHET LEE WEST,	)	
	)	
Defendant.	)	

**GOVERNMENT'S RESPONSE  
TO DEFENDANT'S OBJECTION TO FINDINGS AND RECOMMENDATIONS**

Prepared and submitted by:

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and

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### **NATURE OF THE CASE**

Chet Lee West is charged in a three-count Indictment relating to violations of Title 26, United States Code, Section 7201. The Indictment was presented to a Grand Jury seated in the District of Nebraska. The Grand Jury found probable cause to believe defendant had committed the criminal offenses set forth in the Indictment.

The three-count Indictment covers three separate one-year time periods, commencing in at least 2007 and throughout 2009. In each of the three counts, it is alleged that defendant received taxable income from his employer for each calendar year, 2007 through 2009, for which he had an amount of income tax due and owing the United States and has failed to pay. Each count of the Indictment alleges that defendant did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America by taking affirmative acts of evasion at times material to the Indictment.

### **MATTERS BEFORE THE COURT**

The United States of America, by and through the undersigned Assistant United States Attorney, submits this response to defendant's "Counter to GOVERNMENT'S BRIEF IN RESPONSE to Motion to dismiss for payment of assessed taxes and Objection to Findings and Recommendations." (hereinafter referred to as "Objection to Findings and Recommendations") (Filing No. 114). The government respectfully requests that this Court deny the defendant's Objection to Findings and Recommendations.

### **OBJECTION TO ORDER**

Defendant's Objection to Findings and Recommendations (Filing No. 114), contains essentially the same arguments made in defendant's Motion to Dismiss (Filing No. 108), which claims there exists no lawful IRS tax assessment for the prosecution to proceed against him. Defendant again makes the argument the Court that the IRS has not issued an assessment of taxes owing and therefore the case should be dismissed. (Filings No. 114). The Objection to Findings and Recommendations fails to properly cite any authority supporting defendant's re-asserted position.

Instead, defendant incorrectly makes the argument that those cases which held "an assessment is not a necessary element of a payment evasion charge" United States v. Silkman, 156 F.3d 833, 836-37 (8th Cir.1998) and "that a defendant may be convicted under § 7201 even when the IRS has not issued an assessment of taxes owing" United States v. Gustafson, 528 F.3d 587, 592-93 (8th Cir. 2008) require a signed assessment of taxes owing for the prosecution to proceed against him. (Filings No. 114).

Because defendant's Objection to Findings and Recommendations is largely repetitive of the Motion to Dismiss (Filing No. 108), the government reasserts and reincorporates herein the arguments and supporting authorities contained within its previously filed response set forth in Filing No. 112.

Accordingly, the government again asserts defendant's Motion to Dismiss was properly denied as reasoned in the Findings and Recommendation on the Motion to Dismiss. (Filing No. 113).

### CONCLUSION

The United States respectfully requests that defendant's Objection to Findings and Recommendations (Filing No. 114) be overruled.

Respectfully Submitted,

UNITED STATES OF AMERICA,  
Plaintiff,

DEBORAH R. GILG  
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### CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. The filing was sent by U.S. mail to the following:

Chet Lee West  
124 Glen Forrest Drive  
Nebo, NC 28761

s/ Donald J. Kleine  
Assistant United States Attorney